777

1867
7

Mah.

# SUPREME COURT OF THE UNITED STATES.

No. ~~207.~~ 221.

THE UNITED STATES, APP'TS,

vs.

GREGORIO TAPIA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

GOVERNMENT PRINTING OFFICE.

# SUPREME COURT OF THE UNITED STATES.

## No. 297.

THE UNITED STATES, APP'TS,

vs.

GREGORIO TAPIA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

*"Aguajito."*

INDEX.


| | Original. | Print. |
|---|---|---|
| Transcript from land commissioners | 1 | 1 |
| Map | 17 | 7 |
| Notice of appeal | 40 | 17 |
| Notice of trial | 41 | 17 |
| Order for hearing | 42 | 18 |
| Order for continuance | 42 | 18 |
| Deposition of G. Tapia | 44 | 18 |
| Petition for review | 48 | 20 |
| Summons | 51 | 21 |
| Answer | 53 | 21 |
| Order to file notice of appeal | 55 | 22 |
| Notice of intention to prosecute appeal | 57 | 22 |
| Decree of U. S. district court | 59 | 23 |
| Appeal to Supreme Court | 61 | 24 |
| Clerk's certificate | 62 | 24 |

1 *Transcript of the proceedings in case No.* 597.

GREGORIO TAPIA, claimant,
*vs.*
THE UNITED STATES, defendant.
} For the place named "Aguajito."

2

3 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

Be it remembered that on this seventeenth day of February, anno Domini one thousand eight hundred and fifty-three, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Gregorio Tapia, for the place named "Aguajito," was presented and ordered to be filed and docketed with No. 597, and is as follows, to wit:

(*Vide* page 3 of this transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *December* 28*th*, 1853.

In case No. 597, Gregorio Tapia, for the place named "Aguajito," the deposition of Juan B. Alvarado, a witness in behalf of the claimant, taken before Commissioner Thompson Campbell, with document marked "A. T. C., No. 1," annexed thereto, was filed.

(*Vide* page 5 of this transcript.)

SAN FRANCISCO, *December* 5, 1854.

Case No. 597 was ordered to be placed at the foot of the 3d class cases on the trial docket.

SAN FRANCISCO, *December* 19, 1854.

Case No. 597 was ordered to be placed at the foot of the 4th class cases on the trial docket.

SAN FRANCSICO, *March* 13, 1855.

4 Case No. 597 was submitted under the rule of March 21, 1854.

SAN FRANCISCO, *May* 8, 1855.

In the same case Commissioner R. Aug. Thompson delivered the opinion of the board rejecting the claim.

(*Vide* page 29 of this transcript.)

And the following order was made, to wit:

(*Vide* page 31 of this transcript.)

5 *Petition.*

To the honorable board of commissioners for ascertaining and settling private land claims in the State of California:

Your petitioner, Gregorio Tapia, of the county of Monterey, State of California, respectfully represents to your honorable board that he claims a certain tract of land called Aguajito, containing one half league, more or less, situated in the county of Monterey, State of California; that he claims the same in fee by virtue of a grant made to him under the authority of the Mexican government by D'n José Figueroa, governor of the the territory of California, bearing date of the 13th of August, 1835.

Your petitioner further represents that he never has been called upon to present again his title after the corresponding dispatch had been sent for approbation to the departmental assembly, which makes him suppose that said formality has been neglected, or if said approbation has been obtained, he, your petitioner, has no knowledge of the fact.

Your petitioner would further represent that never any taxes or other retribution have been asked or reclaimed of him, nor by the city municipality, nor by any other public authority.

Your petitioner further respectfully represents that said land was granted to him after the commission of colonization, the commander of the presidio and the municipal authorities of Monterey had given their declarations and statements; that he has received said lands in recompense for his services military of the Mexican national army; that he has no property or fortune, and has a numerous family.

Your petitioner presents herewith the whole despatch in the Spanish language, with the translation of the title and other documents, and will make further proof of the title if required by the board.

6 Your petitioner prays your honorable board to take into consideration his claim to said tract of land, and decree the title to be valid, and confirm the same.

And your petitioner will ever pray and feel thankful.

For GREGORIO TAPIA,
J. SELLVANHAUT.

Flled in office Feb'y 17th, 1853.

GEO. FISHER, *Sec'y.*

7 *Deposition of Juan B. Alvarado.*

OFFICE OF THE U. S. BOARD OF LAND COMMISSIONERS, &c.,
*San Francisco, December* 28, 1853.

This day, before Commissioner Thompson Campbell came Juan B. Alvarado, a witness in behalf of claimant, Gregorio Tapia, petition No. 597, and, being sworn, deposed as follows; his evidence being in Spanish was interpreted by the secretary as follows:

1st question. What is your name, age, and place of residence?

Answer. My name is Juan B. Alvarado; I am forty-four years of age, and I reside in Contra Costa county.

2d quest. Look at the document now shown you, marked A. T. C. No. 1, and annexed to this deposition, and say whether or not you have compared it with a document on file in the office of the United States surveyor general for California. If yes, say whether this be or not a correct and true copy of the said document on file as aforesaid.

Answer. I recognize the document now shown me, and marked A. T. C. No. 1, as a true and correct copy of its original now on file in the office of the United States surveyor general's office for California, having myself compared them with each other.

3d question. Are you acquainted with the handwritings of José Figueroa, Agustin V. Zamorano, and of the various other persons whose signatures occur in and upon the said original document on file as aforesaid in the office of the United States surveyor general for California. If yes, state your means of knowledge, and whether
8 or not the signatures, wherever they occur in and upon said original document, are the genuine signatures of the said persons respectively.

Answer. I am acquainted with the signature, of the persons mentioned in the foregoing interrogatory with the exception of two, viz: the petitioner Gregorio Tapia and John Rainsford. I have seen all the other persons frequently write and sign their names, and I recognize their signatures wherever they occur on said document, as the true and genuine signatures of said persons.

4th question. Are you acquainted with the land claimed in this case called Aguajito by the said petitioner, Gregorio Tapia? If so, state all you know in regard to the occupation and inhabitancy of the same by the said Tapia.

Answer. I know the petitioner, Gregorio Tapia, ever since my boyhood. I am also acquainted with land claimed by him in the case. I know that immediately after he obtained the grant he took possession of the premises. In the year 1836 I was invited to Tapia's house; he was living on said place at that time. I learned from others that he took possession immediately after he obtained his grant. The occasion upon which I was invited to Tapia's house was on account of his gratitude for the grant he had received; the public authorities and the political chief were all present. At that time he had a house in which he lived with his family; he had corrals, and had some work-oxen, cows, and other domestic animals; he had a snug little farm, taking it altogether. The place is about
9 two thousand varas distant from the plaza of Monterey. One of the boundaries of said place is the Cañada de la Cuerte Brya, as expressed in the map; the boundary on the north is the Camino del Sausito, as is a range of hills running in a southeast direction; the western boundary is a cañada, the name of which I do not now recollect. The said place is well known on account of its occupation and boundaries, and, as I believe, is now occupied by some person for the original grantee.

*Questions by the associate law agent.*

1st question. Were the ejidos of Monterey ever marked out and determined by order of the government?

Answer. The ejidos of Monterey had been provisionally determined by a decree of the political chief with the consent of the territorial assembly, but they were never measured nor marked out, to my knowledge. This determination I believe was made in the year 1827, and was done with the view of having it ultimately marked out, and to lay out what we call the *fundo legal*. The name of the political chief who was at the dinner to which I have referred in the former part of my deposition was Nicholas Gutierrez.

This was about the time when Castro gave up the government to Gutierrez.

JUAN B. ALVARADO.

Sworn to and subscribed before me this 28th day of December, A. D. 1853.

THOMAS CAMPBELL, *Comm'r.*

Filed in office Dec'r 28th, 1853.

GEO. FISHER, *Sec'y.*

11 *A.—Espediente.*

Jurisdiccion de Monterey. Año de 1834.

Espediente sobre el parage nombrado el Aguajito, solicitanda por Gregorio Tapia.

Annexed to the depo. of Juan B. Alvarado, Dec. 23d, 1853.

GEO. FISHER, *Sec'y.*

12 Sello tercero, dos reales.

Habilitado provicionalmente por la aduana maritima de Monterey, para los años de mil ochocientos treinta y ocho y mil ochocientos treinta y cinco.

FIGUEROA.
RAFAEL GONZALEZ.

MONTEREY,
*Junio* 10 *de* 1834.

De conformidad con los leyes de la materia informe el aguntamiento de esta capital si el contenido en este instancia obtiene los requisitos para ser atendido en lo solicitud si el terreno que pretende esta comprendido en

SO'R GEFE SUP'R POLITICO: Gregorio Tapia, soldado licenciado de la comp'a de cab'a de este puerto, segun acredita la adjunta certificacion; ante V. S. con el debido respeto comparece y expone que allandose posedor de algun numero de ganado m'or, bacuño y cabayar y careciendo de la propiedad el terreno para establecer sus dichos

las 20 leguas limitrofes ó diez littorales que espresa la ley de 18 de Agosto de 1824, si es de regadio temporal ó abrevadero si pertenece a propiedad de algun particular; micion, corporacion, pueblo, con todo lo demas q. sea concerniente ó ilustrar la
13 materia evacuendo que sea pasara el expediente al capitan de la comp'a de este presidio para qe. esponga su informe. El S'r Don José Figueroa, general de brigada, comandante g'l, inspector y gefe superior politico de la Alta California, asi lo mandó decretó y firmó de que doy fee.

JOSE FIGUEROA.
AGUSTIN V. ZAMORANO,
*S'rio.*

bienes; en esta virtud occurro al recta justicia de V. S. afin de que en uso de sus facultades se digne concederme el sitio nombrado el Aguajito que se halla à las mediciones de este poblacion como una legua escasa cuyo diceño acompaño; mas suponiendo que el espresado terreno sean ejidos de dicho poblacion me sujeto en este caso a pagar lo que se me imponga por derechos de municipalidad.

Por tanto A. V. S. suplico se sirva probeer en mi favor de lo que recebire merced y gracia, jurando no ser de malicia y lo necesario.

Monterey, 23 de Mayo, 1834.

GREGORIO TAPIA.

En sesion de este dia para este espediente à lo comicion de colonizacion.

MONTEREY, *Junio* 11, 1834.

Por ausencia del secretario.

JOSE AGUILA.

Sello tercero, dos reales.

Habilitado provicionalmente por la administracion de la aduana maritima de Monterey para los años de mil ochocientos treinta y cuatro y mil ochocientos treinta y cinco.

FIGUEROA.
RAFAEL GONZALEZ.

Y ayunt'o constitucional la comision encargado de colonizacion y terrenos baldios ha visto la solicitud que presenta el C. Gregorio Tapia relativa en que se le conceda el paraje nombrado el Aguajito, mesa grande y Cañada del Segunda, en cumplimiento del sup'or decreto que le acompaña; opino esta comision que el referido Tapia es Mexicana pr. nacimiento, lo que le da el requisito que pretiene la ley para ser atendido en su solicitud. El terreno pretendido no esta comprendido
14 en las veinte leguas limitrofes y si en los diez litorales de que abla la ley de 18 de Agosto de 1824, es de temporal y abrevadero y pertenese a los ejidos de esta poblacion aunque no estan señalados pero desta poco menos de una legua, por cuyo motivo la comision ofrece à este y. ayuntamiento los proposiciones siguientes:

1o. Puede adjudicarlse le el terreno pretendido al C. Gregorio Tapia en razon que se promete pagar el senso que se le imponga pr. estos municipalidad.

2o. Que pa. dar el lleno al sup'or decreto que acompaña à esta ynstancia pase al capitan de cabelleria de este puerto.

Mont'y, 20 de Junio de 1834.

JOSÉ AGUILAR.
JOSÉ ANTONIO ROMERO.

Sor Gefe Superior Politico: El y. ayuntamiento constitucional de este capital con el objeto de dara V. S. al informe que se serve pedir con su superior decreto de lo del actual pasà el presente espediente à la colonizacion quien presento é dictamen que antecede, y como su contenido es lo que eleve informar esta corporacion lo reproduce en todas sus partes.

Monterey, Junio 29 de 1834.

MANUEL JIMENO CASSARIN.
JOSÉ AGUILAR,
*Por ausencia de secret'o.*

Con esta f'ha paso este espediente al Capitan C. Agustin V. Zamorano.

Monterey, Junio 26, 1834.

JOSÉ AGUILAR,
*Por ausencia de secret'o.*

S'r Gefe Superior Politico: El terreno solicitado por Gre-
15 gorio Tapia no pertenece a los situados de caballada de mi compañia.

Monterey, Junio 28 de 1834.

AGUSTIN V. ZAMORANO.

Sello cuatro, un cuartilla. Habilitado provisional mente por la administracion de la aduana maritima de Monterey, para los años de mil ochocientos treinta y cuatro y mil ochocientos treinta y cinco.

FIGUEROA.
RAFAEL GONZALES.

Agustin V. Zamorano, capitan de la compañia de caballeria permanente del presidio de Monterey.

Certifico que el vecino Gregorio Tapia sirvio en mi compania en la carrera de las armas diez años y meses y por cumplido el tiempo de su empeño pidio su licencia absoluta que disfruti en Febrero del presente año. Y para los fines que le convengan òlo y esta a su pedimento en Monterey á diez y siete de mayo de mil ochocientos treinta y cuatro.

AGUSTIN V. ZAMORANO.

Monterey, Octubre 20 de 1834.

Pase al alcalde de esta capital ante quien la parte de Gregorio Tapia, producirá una informacion de tres testigos idoneos que seran interrogados sobre dos puntos signientes: 1o. Si el solicitante es Mejicano por nacimiento, si es casado y tiene hijos, si es de buena conducta. 2o. Si el terreno que pertenece a la propiedad de algun particular, mision, puebla, o corporacion, si es de regadio temporal, o abrevadaro y que estencion tendra. 3o. Si tiene bienes de campo con que poblarlo o posébilidad de adquirirlos.

16 Evacuados estos diligencias buelva el espediente para su resolucion. El S'or D. José Figueroa, general de brigada, comandante general, inspector y gefè superior politico del territorio de la Alta California, asi lo mando decreto y firmo de que doy feé.

JOSÉ FIGUEROA.
AGUSTIN V. ZAMORANO.

Monterey, 21 de O'bre de 1834.

Por presentado y admitdo, recibase le lo informacion mandada en el decreto que antecede. Asi yo el alcalde lo deceeté mando y firmo con los de asistencia.

MANUEL JIMENO CASARIN.

De ass'a: F'co del Castillo Negrete.
De ass'a: Juan Malarin.

En la f'ha, se le notifico el auto anterior al interesado de lo que quedo enterado, y no firmo por no saber lo hize yo con los de asistencia.

CASARIN.

De ass'a: F'co del Castillo Negrete.
De ass'a: Juan Malarin.

Hoi dia cuatro de Febrero de mil ochocientos treinta y cinco yo el alcalde David E. Spence, le hice saber al interesado el estado de este espediente pa. q. presentase en este jusgado los testigos que se mando en el decreto que antecede de lo que quedo enterado y no firmo por no saber enemo haciendola yo con las de mi asistencia.

DAVID SPENCE.

De ass'a: F'co del Castillo Negrete.
De ass'a: Juan Malarin.

No habiendo parecido el interesado en este espediente a hacer lo informacion de tres testigos q. a lo mandado se le hizo.

18 Sello cuatro, una cuartilla.

Habilitado provicionalmente por la administracion la aduana maritima de Monterey para los años de mil ochocientos treinta y cuatro y mil ochocientos treinta y cinco.

FIGUEROA.
RAFAEL GONZALES.

Saber de nuevo hoi quince de Abril de mil ochocientos treinta y cinco de lo que quedo enterado.

DAVID E. SPENCE.

De ass'a: F'co del Castillo Negrete.
Ass'a: Juan Malarin.

Monterey, *Agosto* 8 *de* 1834.

Presente el C. Gregorio Tapia se le notifico el auto de 21 de O'bre ultimo y entendido dijoi lo aye y q., presenta por testigos à los C. C. Prudencio Espinosa, Joaquin Soto y Miguel Abila, y no firmo por no saber lo hise yo con los de ass'a.

SPENCE.

Ass'a: José Maria Maldonado.
Ass'a: Miguel Abila.

En la presente f'ha, Prudencio Espinosa le recive juramento en forma de derecho por el cual.

(Here follows a map or plan, marked original, page 17.)

Sello tercero, dos reales.

Habilitado provicionalmente por la administracion de la aduana maritima de Monterey de la Alta California, para los años de mil ochocientos treinta y cuatro y mil ochocientos trenita y cinco.

FIGUEORA.
A. RAMIREZ.

Ofrecio decir verdad en lo que supiere y fuere preguntado y
19 siendolo por su nombre, estado, edad, patria y religion, digo llamarse como queda dicho, que es casado de treinta y tres años, natural de la mision de la Soledad y C. A. R.

Preguntado. A consecuencia del interrogotario que se mando en el superior decreto de 30 de Oct., ppo. dijo a lo primero, que el solicitante es ciudadano Mejicano por nacimiento que es casado, que no tiene hijos y que es de buena conducta y responde.

A'lo 2o. Que el terreno que pretende save q. pertenece a este de Monterey. Que es de regadio y de temporal y que su estencion seg'n su conocimiento sera de medias legua de largo y medaa de ancho y responde.

A'lo 3o. Que tiene pocos bienes de campo, pero que tiene posibilidad de adquirirlos suficientes para poblarlo, que lo dicho es la verdad à cargo del juram'to que tiene hecho en el que se a firmo y ratifico leido que le reju su declaracion y no firmo por no saber lo hizo yo con los de ass'a.

DAVID E. SPENCE.

Ass'a: JOSE MARIA MALDONADO.
Ass'a: JOHN RAINSFORD.

Ynmediatam'to presente el C. José Joaquin Soto lo recivre el juramente que hizo en forma pr. el cual ofrecio decir verdad en lo que supiere y fuere preguntado y siendolo por su nombre estado, edad, patria y religion, dijo; llamarse como dicho esta que es casado de treinte y cuatro años, su patria Mont'y, y C. A. R.

Preguntado. Por el mismo interrogatorio que lo fue el anterior testigo dijo.

A'lo 1o. Que el interesado es Mejicano por nacimiento que es casado, que no tiene hijos n'en enteresados y que su conducta es bueno y responde.

20 A'lo 2o. Que el terreno que pretende save que pertenece a esta capital. Que es de temporal y tiene poco de regadio y que tendrà poco mas ó menos media legua de largo y un cuatro de ancho y responde.

A'lo 3o. Que le conoce algunos bienes de campo y que lo dicho es la verdad a cargo del juram'to que tiene hecho en el que se afirmo y ratifico leida que le fue su declaracion, y no firmo pr. no saver, lo hize yo con los de ass'a.

DAVID E. SPENCE.

De ass'a: JOSE MARIA MALDONADO.
Ass'a: JOHN RAINSFORD.

En el mismo dia mes y año presente el C. Miguel Abila le recivre juramento en forma de derecho bajo el cual ofrecio decer verdad en lo que sapiere y fuere preguntado y siendo lo por su nombre estado, edad, patria y religion ; digo que se llama coma dicho es q. es casado, de edad treinta y cinco años——

Sello tercero, dos reales. Habilitado provicionalmente por la administracion de la aduana maritima de Monterey de la Alta California para los años de mil ochocientos trienta y cuatro y mil ochocientos treinta y cueco.

FIGUEROA.
A. RAMIREZ.

——natural del residio de S'ta Barbara y C. A. R. Preg't'do. Por el interrogatorio con que lo fueron los antecedentes testegos digo.

A'lo 1o. Que el cind'o que solicita es Mejicano por nacim'to que es casado y no tiene mas hijos que los politicos que estan en su poder hijos de su esposa y que tiene buena conducta y responde.

A'lo 2o. Que el terreno que pretende pertenece a esta pobla-
21 cion que es de regadio, temporal y abrevadero, y que su estencion sera de tres cuatros de legua en circumferencia y responde.

A'lo 3o. Que no save mas sobre lo que se le pregunta, que de entiendo que tiene alg'o veres ; que lo dicho es la verdad a cargo del juram'to que tiene hecho en el que se afirmo y ratifico leida que le fuè su declaraciones y lo firmo con migo y los de ass'a.

DAVID E. SPENCE.

De assa :
JOSE MARIA HALDONADO.
JOSE RAINSFORD.

En la f'ha concluida la informacion que se pide se devuelve este esped'te al S. gefe politico en cumplimento de lo mandado en el auto q. antecede y lo para constancia que rubrica.
Monterey, 13 de Agosta de 1835.

Vista la peticion con que da principio este espediente la informacion del y. ayuntamiento de este capital la certificacion, del sn. capitan de cavalleria de este puerto la esposicion de testigos con todo lo demas que se tuvo presente y ver convino, de conformidad con lo dispuesto por las leyes y reglamentos de la materia se declara al C. Gregorio Tapia, dueño en propiedad del terreno nombrado el Aguajito con la precisa circunstancia qe. se sujetara a pagar lo que se le señale cuando se demarquen los linderos de esta capital ; librese le el despacho correspondiente tomese razon en el libro respectivo ò dirijase este espediente para su aprobacion à la ex'mo diputacion en cuyo caso el interesado à quien se le hara saber este decreto presentarà nuevamente en titulo
pa. que se le revalide. El S'or Don José Figueroa, general de
22 brigada, comandante general, ynspector y gefè superior politico del territorio de la Alta California asi lo mando, decreto é firmo de lo que doy fee.

JOSÉ FIGUEROA.
F. CASTILLO NEGRETO, *S'rio.*

OF THE UNITED STATES FOR CALIFORNIA.
OFFICE OF THE SURVEYOR GENERAL

I, Samuel D. King, surveyor general of the United States for the State of California, and as such, now having in my office and under my charge a portion of the archives of the former Spanish and Mexican territory or department of Upper California, do hereby certify that the fifteen preceeding and hereunto annexed pages of tracing paper, numbered from one to fifteen, inclusive, exhibit true and accurate copies of certain documents on file and forming part of the said archives in this office.

In testimony whereof I have hereunto signed my name officially, and affixed my private seal, (not having a seal of office,) at the city of San Francisco, California, the 28th day of January, 1853.

SAM'L D. KING,
*Surv. G'l Cal'f'a.*

Filed in office Feb'y 17, 1853.

GEO. FISHER, *Sec'y.*

23

24 B.

*Translation in part of espediente.*

To his excellency the superior political chief:

Gregorio Tapia, dismissed military of the company of cavalry of the port, respectfully represent himself and say, that possessing a certain number of cattle and other animals, and desirous to obtain in property a piece of land where to put said animals, he requests from the justice of your excellency that you may be pleased, using of your faculties, to grant to your petitioner the place named Aguajito, situated in the neighborhood of the town, distance of about one league, and of which I annex the map, and in the supposition that said tract is situated within the limits of the town I also subject myself to pay whatever municipal taxes they may ask of me.

In consequence of which, I beg, your excellency, you may be pleased to decide in my favor, for which I will feel thankful.

Monterey, 23 of May, 1834.

(Signed) GREGORIO TAPIA.

MONTEREY, *June 10th, of* 1834.

In conformity with the laws on the subject, the assembly of this capital will inform if the present petition has all the requisites necessary, and if the request has to be taken in consideration; if the land he asks for is situated within the twenty frontier leagues or the ten littoral leagues, as expressed in the law of 18th August, of 1824; if it is temporal, can be irrigated, or if it is a watering place; if it is the property of any person, mission, or city, and every other par-
25 ticular which may throw light upon the subject, and finally to send the dispatch to the captain of the presidio, that he may give his declaration.

D'n José Figueroa, general of brigade, general commander, inspector and superior political chief of High California, dictate, order, affirm, and sign, of which I give faith.

(Signed) JOSÉ FIGUEROA.
(Signed) AGUSTIN V. ZAMORANO.

In the meeting of this day, sent the present dispatch to the commission on colonization.

Monterey, June 11, 1834.

By absence of the secretary,
(Signed) JOSÈ AGUILA.

MONTEREY, 13*th of August*, 1835.

Considering the petition at the beginning of the present dispatch, the information of the assembly of this capital, the declaration of the captain of cavalry of this port, the depositions of the witnesses, with every other fact which was necessary to know, and in conformity with the laws and regulations in the matter, the citizen Gregorio Tapia is declared the right owner of the land named Aguajito, with the condition that he submit himself to pay the amount which may be asked of him when the limits of the city will be fixed and indicated. The corresponding dispatch will be delivered to him. Copy will be taken with proper registers, and the present dispatch will be sent for approbation to the honorable deputation, in which case the interested, who will be informed of the present decree, will again present
26 his title to be ratified.

His excellency D. Josè Figueroa, general of brigade, general commander and inspecter of the territory of High California.

(Signed) JOSÉ FIGUEROA.
(Signed) F'CO DEL CASTILLO NEGRETE, *Sec't.*

MONTEREY, *June* 10*th, of* 1834.

In conformity with the laws upon the matter, the council of this capital will have to inform if this petition contain all that is requisite to be attended to, and if the lands asked for are situated within the twenty limitary leagues, or the ten littoral leagues, as expressed in the law of the 18th of Aug't, 1824; if they are irrigable lands or watering places; if they are the property of any private person, mission, corporation, or city, with everything else which may give light upon the subject or matter, after which the dispatch (espediente) will be sent to the captain of the company of this presidio, that he may give his opinion. His exc'y Dn. José Figueroa, general commander, inspector, and supreme political chief of High California, see order, decree, and sign, of which I give faith.

(Signed) JOSÉ FIGUEROA.
(Signed) AGUSTIN ZAMORANO, *S'rio.*

In the union of this day the present dispatch has been sent to the commission of colonization.

Monterey, June 11, 1834.

By absence of the secretary,
(Signed) JOSÉ AGUILA.

MONTEREY, *August 8th of* 1835.

Gregori Tapia having presented himself, the decree of the 21st of Octo. last was notified to him ; after hearing he presented his witnesses, Prudencio Espinora, Joaquin Soto, and Miguel Abila. He did not sign, not knowing how to write.

(Signed) DAVID SPENCE.
(Signed) JOSÉ MARIN MALDONADO.
(Signed) MIGUEL ABILO.

This day presented himself Prudencio Espinora, who, after being duly sworn, promise to speak the truth of all what he knows,
31 and having been requested to tell his name, profession, age, country, and religion, answers his name to be as mentioned before ; that he is married, thirty-three years of age, and was born at the mission of the Soledad.

In consequence of the interrogatory ordered by the superior decree of 20th Oct., he answers to the 1st : That the petitioner is a Mexican citizen by birth, is married, has no children, is of good conduct. His answer to the 2d : The land asked for belongs to Monterey ; it is irrigable and temporal, and of extent, so far as he knows, half a league long and half a league broad. His answer to the 3d : That he has few animals, but is in a position to obtain sufficient to occupy the land ; that what he has declared upon oath is the truth, and confirm the same after his declaration was read to him, but not knowing to write, he did not sign. I signed with my assistants.

(Signed) DAVID SPENCE.
(Signed) JOSÉ MARIA MALDONADO.
(Signed) JOHN RAINSFORD.

Immediately after José Joaquin Soto presented himself; having been duly sworn, he offers to speak the truth of all what he knows, and having been asked for his name, profession, age, country, and religion, he answers : That his name is as mentioned ; that he is married ; that he is thirty years of age, and was born in Monterey.

Questions by virtue of the same interrogatory before-mentioned, the witness answers to the 1st : That the interested is a Mexican citi-
32 zen by birth ; that he is married ; that he has no children, except step-children ; that his conduct is good. His answer to the second : that the land he asks for is known as belonging to the city ; that it is temporal and has a little irrigable land and is a little, more or less, one half league long and half league broad in extent. His answer to the 3d : That he knows he possesses some animals ; that this is the truth in conformity with the oath he made, which he maintains and confirms after his testimony was read to him, but not knowing to write he did not sign.

(Signed) DAVID SPENCE.

Assistants :
(Signed) JOSÉ MARIA MALDONADO,
(Signed) JOHN RAINSFORD.

The same day, month, and year presented himself C. Miguel Abila; after having been duly sworn, and by which oath he promised to tell the truth of all he knows, and having been requested to tell his name, if married, his age, country and religion, he answers: That his name is as mentioned; that he is married; is thirty-five years of age, and was born in the presidio of Santa Barbara.

Questioned by virtue of the interrogatory before-mentioned, the witness answers:

To the 1st: That the interested is a Mexican citizen by birth; that he is married, has no children, except by a former marriage, or step-children, and that his conduct is good. His answer to the 2nd: That the land he asks for is known to belong to the capital; that it is temporal, and has but little irrigable land, and has one half league in length and one half league wide, more or less. He answers to the 3d: That he knows he has some cattle and other animals; that
33 what he has declared is the truth, which he confirms after his declaration was read to him. He has not signed, not knowing to write.

(Signed) DAVID SPENCE.

Assistants:

(Signed) JOSÉ MARIA MALDONADO.

(Signed) JOHN RAINSFORD.

This day has been closed the inquiries which have been asked, and the dispatch is sent back to his excellency the political chief, as ordered by the act which precede, and I authenticate the present by signing the same.

(Signed) DAVID SPENCE.

Filed in office Feb'ry 17th, 1853.

GEO. FISHER, *Sec'y.*

34 *Opinion.*

GREGORIO TAPIA *vs.* THE UNITED STATES. } No. 597.—Aguajito, ½ square league of land, Monterey county.

The only documentary evidence introduced by the petitioner in support of his claim is a traced copy from the archives in the office of the United States surveyor general of an espediente formed upon the application of the present petitioner for a grant of the premises claimed, presented to Governor Figueroa on the 23d of May, 1834. This document is drawn up with all the minuteness and particularity which characterized the proceedings of that officer, and ends with a decree of concession signed by the governor, declaring the petitioner owner of the lands prayed for, and directing the title to be issued to him. The genuineness of the signatures contained in the original espediente, with two exceptions, are proved by Juan B. Alvarado, who also proves that the claimant has occupied, lived on, and cultivated the land claimed from the year 1836, at which time he had a

house, tame oxen, cows, and other domestic animals, and a snug little farm in cultivation on the place.

There is no proof that the title was ever issued to the party, nor of its loss, as avowed in his petition.

It has been repeatedly decided by the commission that without some evidence of the actual delivery of the grant, or other evidence of title to the grantee, and a proper foundation for the introduction of secondary evidence of its execution and contents, the mere existence of a decree of concession in the archives was not such evidence of title as would establish the validity of the claim and
35 authorize the board to enter a decree of confirmation. This claim bears strong intrinsic evidences of merit, and if proper testimony of the execution, loss, and contents of the original grant had been adduced, would clearly have been entitled to confirmation, but in the present state of the testimony a decree of rejection will be entered.

Filed in office May 8, 1855.
(Signed) GEO. FISHER, *Sec'y.*

*Decree.*

GREGORIO TAPIA
*vs.* } No. 597.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the petitioner is not valid, and it is therefore decreed that his application for a confirmation thereof be, and the same is hereby, denied.

R. AUG. THOMPSON,
S. B. FARWELL,
*Com'rs.*

Filed in office May 8, 1855.
(Signed) GEO. FISHER, *Sec'y.*

36 *Order.*

And it appearing to the satisfaction of the board that the land hereby adjudicated is situated in the southern district of California, it is hereby ordered that the transcript of the proceedings and of the decisions in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary, one of which transcripts shall be filed with the clerk of the United States district court for the southern district of California, and the other be transmitted to the Attorney General of the U. States.

37

38 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing thirty-one pages, numbered from 1 to 31, both inclusive, to contain a true, correct and full transcript of the record of the proceedings, and of the decision of the said board, of the

documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 597 on the docket of the said board, wherein Gregorio Tapia is the claimant, against the United States, for the place known by the name of Aguajito

In testimony whereof I hereunto set my hand and affix my private [SEAL] seal, (not having a seal of office,) at San Francisco, California, this twenty-seventh day of October, A. D. 1855, and of the independence of the United States of America the eightieth.

GEO. FISHER, *Sec'y.*

Filed Nov. 24, 1855.

C. E. CARR, *Clerk.*

39

40 *Notice of appeal.*

Clerk's office of the district court of the United States for the Southern district of California.

Whereas the commission constituted for the purpose of ascertaining and settling private land claims in the State of California, by the act of Congress of the United States of America approved on the 3rd March, 1851, entitled "An act to ascertain and settle the private land claims in the State of California," did on the eighth day of May, 1855, by their decision of that date decide against the claim presented by the undersigned to the said commissioners, which claim is No. 597 on the docket of claims before said board, and is for land lying in the said southern district, and the said claimant being desirous that the said district court should review the said decision, now hereby files this notice in the said clerk's office of his intention to prosecute an appeal, as is provided by the 12th section of "An act making appropriations for the civil and diplomatic expenses of the government for the year ending the 30th of June, 1853, and for other purposes," which said act was approved on the 31st of August, 1852.

GREGORIO TAPIA,
By his counsel, THORNTON, WILLIAMS & THORNTON.

To C. E. CARR,
*Clerk of said court.*

Filed Nov. 12, 1855.

C. E. CARR, *Clerk.*

41 *Notice of trial.*

In the district court of the United States for the southern district of California.

GREGORIO TAPIA, appellant, *ads.* THE UNITED STATES, appellee. } Case No. 323.—"Aguajito."—Trans. 597.

*To the district attorney of the United States for said district:*

SIR: Take notice that on the 4th day of January, A. D. 1858, at 11 o'clock a. m. of said day, or as soon thereafter as the same can

be heard, the claimant and appellant will submit said cause to the aforesaid court for decision.

SLOAN & HARTMAN,
*Att'ys for appellant.*

Los Angeles, *December* 30, 1857.

Filed this 30th Dec'r, 1857.

C. SIMS, *Cl'k,*
Per J. H. COLEMAN, *Dep'ty.*

42 Whereupon the following proceedings were had in open court, to wit:

*Cause set for hearing.*

United States district court, south'n dist. Cala.—Regular December term, A. D. 1857.—January 6th, A. D. 1858.

Gregorio Tapia, appellant,
*vs.*
The United States, appellee. } No. 323.

On motion of Sloan & Hartman, counsel for claimant, this cause is set down for hearing on Thursday, January the 7th, A. D. 1858, at 11 a. m.

*Continuance.*

U. S. district court for the south'n district Cala.—Regular December term, A. D. 1857.—January 7th, A. D. 1862.

Gregorio Tapia, appellant,
*vs.*
The United States, appellee. } No. 323.

On motion of Sloan & Hartman, atty's for claimant, it is ordered that this cause be continued until the 21st day of January, 1858, at 11 o'clock a. m.

43

44 *Depo. of Gregorio Tapia.*

No. 323.

United States district court, southern district of California.

Gregorio Tapia
*vs.*
The United States. } For Aguajita y Mesa Grande, Monterey county. Transcript No. 323.—Docket No. 597.

On this 10th day of June, A. D. 1857, before me, C. Sims, U. S. d't c'k for the south'n dist. of California, by deputy, Alex. S. Taylor, personally appeared Gabriel de la Torre, of Monterey county aforesaid, who, on being duly sworn, makes oath to the following deposition in the claim of Gregorio Tapia, near Monterey city.

Present: Jacob A. Morenhant on the part of the claimant, and Pacificus Ord, dist. attorney for the United States.

Q. What is your name, age, and place of residence?

Ans. My name is Gabriel de la Torre; age, forty-nine, and I live in Monterey city.

Ques. Do you know Gregorio Tapia, and since when?

Ans. I know him since my childhood. We were brought up together.

Q. Do you know if Gregorio Tapia ever received any concession of lands, and when?

Ans. Yes, I do; he received a grant of land called the "Aguajita," near Monterey city.

45 Q. About what time did he get this grant?

Ans. In 1835, about the time Figueroa was governor of California.

Quest. Did you ever see the title papers of said rancho?

Ans. Yes; I have seen them and had them in my hand.

Quest. Do you know if the lands were occupied by said Tapia, and if there were any improvements on the land?

Ans. He occupied it with cattle, horses, etc., had a sowing, and had a house built upon it.

Ques. Do you know what became of the original title?

Ans. It was burnt; the house was burnt, and the trunk containing his clothing and title papers.

Ques. Were you on the rancho at the time of the fire, and what took place?

Ans. I found Tapia standing under a tree on the rancho; while the house was burning he was crying; he said that everything he had in the house was burnt, which made him miserable, as the title papers were burnt also, which was his greatest loss.

46 Quest. Do you know where Tapia is, and what condition of health he is in?

Ans. He is somewhere in Santa Cruz county, and said to be unwell of paralisis. I do not know if he is alive now. I saw him last year.

Quest. Do you know well the lands Tapia did occupy? What were they?

Ans. Yes, I do know them well; these lands commenced near the Canada Barracas, which canada comes out at the Huerta Vieja, and runs up to the hills; thence it followed along the hills up to the lines of the Saucita, and the other limits on the side are the Camino Real, going to the rancho Torro, and on the other side the Canada Segunda, going on to the Porto Suelo of the Canada Segunda aforesaid.

Ques. When did Tapia leave these lands?

Ans. Shortly after the burning of his house, about 1836; but I can't now recollect exactly the year.

Quest. When did you see these title papers last?

Ans. I saw them when they were conceded, and some six or seven days after that again.

Quest. By whom were these title papers signed?

47 Ans. They were signed by Figueroa. I was present when the title was approved by the departmental assembly, about 1835, in the sala of the governor at the presidio of Monterey.

Quest. What was the size of this tract of land?

Ans. I think the land described contained a league or a league and a half, more or less, but can't say for certain.

The testimony here closed.

GABRIEL DE LA TORRE.

Sworn to and subscribed before me this tenth day of June, A. D. 1857.

ALEX. S. TAYLOR, *Deputy Clerk, etc.*

Filed 10 June, 1857.

A. S. TAYLOR, *Dep't. Clerk.*

48 *Petition for review.*

In the district court of the United States for the southern district California.

GREGORIO TAPIA, appellant, *ads.* THE UNITED STATES, appellee. } No. 323.—"Aguajito."—Trans. 597.

*To the hon. the judge of the district court aforesaid:*

Your petitioner, Gregorio Tapia, respectfully represents that under the provisions of the act of Congress of March 3, 1851, a petition was presented to the board of land commissioners for ascertaining and settling private land claims in the State of California, praying for confirmation to the land described in said petition and accompanying documents, to which reference is here made. That said claim was rejected on the 8th day of May, 1855, by said board of land commissioners. That said land is situated in said southern district. That a transcript of the proceedings and decision of said commissioners made in this case was duly filed in the office of the clerk of the court on the 24th day of November, A. D. 1855; and that a notice of intention to prosecute said appeal has since been filed in said case in said clerk's office by the claimant and appellant.

Your petitioner prays for a rehearing in said case upon the appeal aforesaid; and that the court will reverse the decision aforesaid of said board of land commissioners, and enter a decree of confirmation to the lands aforesaid to the petitioner and claimant, and for such other and further relief as to equity and conscience belongs, and the nature of the case requires.

49 SLOAN & HARTMAN,

50 *Att'y for Claimant.*

Filed 18th January, A. D. 1858.

C. SIMS, *Cl'k,*

Per J. H. COLEMAN, *Dep'ty.*

51 *Summons.*

UNITED STATES OF AMERICA,
*Southern district of California, ss:*

*The president of the United States to P. Ord, U. S. dist. att'y:*

Take notice that a petition, a copy of which is herewith served upon you, has been filed against the United States in the district court of the United States in and for the southern district of California on the 18th day of January, in the year of our Lord one thousand eight hundred and fifty-eight, at the city and county of Los Angeles, in said district, by Gregorio Tapia, praying said court to review the decision of the land commissioners rendered against him on the 8th day of May, 1855, rejecting his claim to the tract of land called "Aguajito," situate in the southern dist. of California; and that you, and each of you, are required to appear at said court, in said city, within ten days after the service hereof, if served on you within the county of Los Angeles, and within twenty days if served on you in the county of San Diego or San Bernardino, and within forty days if served on you in any other county of said State, exclusive of the day of service, and answer said petition, or that judgment by default will be taken against you, and each of you, and the prayer of the said petitioner will be granted with costs.

In witness whereof I have hereunto set my hand and affixed the [SEAL.] seal of the said court this 18th day of January, in the year of our Lord one thousand eight hundred and fifty-eight, at Los Angeles aforesaid.

52 C. SIMS, *Clerk*,
Per J. H. COLEMAN, *Dep'ty.*

I served this summons, along with the proper copy of the petition, upon P. Ord, U. S. attorney, at Los Angeles, in the southern district of California, on the 1 day of February, A. D. 1858.

Sworn to and subscribed before me.
JAMES C. PENNIE, *Clerk.*

Filed this 1st Feb'y, 1858.
C. SIMS, *Cl'k*,
Per J. H. COLEMAN, *Dep'ty.*

53 *Answer.*

In the district court of the United States for the southern district of California.

GREGORIO TAPIA, appellant,
*vs.*
THE UNITED STATES, appellee. } No. 323.—Trans. No. 597.

The answer of P. Ord, attorney of the United States for the southern dist. of Cal'a, to the petition for review in this cause, says that he denies generally the validity of the alleged title of the

claimant, and prays that the court will affirm the decision of the board of land commissioners, and decree the said alleged title to be invalid with costs, and general relief.

P. ORD, *U. S. Att'y.*

Filed this 1st February, 1858.

C. SIMS, *Cl'k,*
Per J. H. COLEMAN, *Dep'ty.*

54

55 *Order to file notice of appeal.*

GREGORIO TAPIA, appellant,
*vs.*
THE UNITED STATES, appellee.
} No 323, D. C.—No. 597, L. C.

It appearing, by inspection of the records, to the satisfaction of the court that notice of intention to prosecute the appeal in this case was duly filed in the clerk's office of this court on the 12 of November, 1855, and that the same has been mislaid, it is ordered that a copy of said notice be placed on file in the place of the one so filed and now mislaid as aforesaid.

ISAAC S. K. OGIER,
*U. S. Dist. Judge for the S. Dist. of Cal'a.*

Filed February 9th, 1858.

C. SIMS, *Cl'k.*

56

57 *Notice of intention to prosecute appeal.*

In the district court of the United States for the southern district of California.

GREGORIO TAPIA, appellant,
*vs.*
THE UNITED STATES, appellee.
} No. 323.—"Aguajito."—Trans. 597.

*To the United States district attorney for the district aforesaid, and the clerk of the aforesaid court:*

The claimant and appellant hereby gives notice of his intention to prosecute an appeal in said cause from the decision of the board of land commissioners for ascertaining and settling private land claims in California, to the district court aforesaid.

SLOAN S. HARTMAN,
*Att'y for Appellant.*

Filed this 9th February, A. D. 1858.

C. SIMS, *Cl'k,*
Per J. H. COLEMAN, *Dep.*

58

59 *Decree.*

In the district court of the United States for the southern district of California.

GREGORIO TAPIA, appellant, *vs.* THE UNITED STATES, appellee. } Case No. 323.—"Aguajito."—Trans. No. 597.

*Decree.*

This cause coming on to be heard on appeal from the decision of the United States board of land commissioners to ascertain and settle the private land claims in the State of California, under an act of Congress approved March 3d, 1851, on a transcript of the proceedings and decision of said board, and the papers and evidence upon which said decision was founded, and the other evidence adduced before this court, and it appearing to the court that said transcript and the notice of appeal have been duly filed according to law, and counsel for the respective parties having been heard, it is ordered, adjudged, and decreed that the decision of said board of land commissioners be, and the same is hereby, reversed, and that the claim of appellant is good and valid in law, and the same is hereby confirmed to him as follows: the tract of land situate in the county of Monterey, State of California, known by the name of "Aguajito," bounded as follows: beginning at the Cañada de Borracos, to the foot of the adjoining hills, where there is a spring; from the spring running to the Porto Suelo of the "Cañada Segunda;" from thence to the line of the "Saucito" rancho, at the lindero of the city of Monterey; from thence, by the Camino Real, to a stone house called the "Casa de Camuellas," near the termination of the
60 "Canada de Barracos," measuring about three thousand varas long by fifteen hundred varas in width, more or less, according to the calls of the grant in this case, and for a fuller description of which reference is here made to the map contained in the transcript, and the evidence on file in the cause.

Thus done in open court this 8th day of February, A. D. 1858.

ISAAC S. K. OGIER,
*U. S. Dist. Judge for the S. District of Cal'a.*

Filed this 8th February, A. D. 1858.

C. SIMS, *Cl'k,*
Per J. H. COLEMAN, *Dep'ty.*

Whereupon the order was made in open court, to wit:

61 *Appeal to S. Court.*

United States district court, south'n dist. Cal'a. Regular December term, A. D. 1857.

GREGORIO TAPIA, appellant,
*vs.*
THE UNITED STATES, appellee.
} No. 323.—"Aguajito."

MARCH 15*th*, 1858.

On motion of E. J. C. Kewen, acting U. S. dist. att'y, it is ordered that an appeal be allowed the United States in this cause.

62 United States district court, southern district of California:

I, John O. Wheeler, clerk of the United States district court for the southern district of California, hereby certify the foregoing sixty-one pages, numbered from one to 61, both inclusive, to contain a full, true, and correct copy of the record of the proceedings and of the decision of the said court, of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 323 on the docket of the said court, wherein Gregorio Tapia is the claimant against the United States for the place known by the name of "Aguajito."

In witness whereof I have hereunto set my hand and affixed the [SEAL.] seal of said court at Monterey, this 6th day of August, A. D. 1862.

JOHN O. WHEELER,
*Clerk U. S. Dist. Court, S. Dist. Cal'a.*

Filed 29 Dec., 1862.